IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10439 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITTHALBHAI LAVJIBHAI DHADKU (PATEL)

Versus

SUB - REGISTRAR

Appearance:

1. Special Civil Application No. 10439 of 2002

MR CL SONI for Petitioner No. 1

MR AMIT KOTAK AGP for respondent Nos.1 and 3

MR PK PAREKH for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2002

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner challenges the action of respondent Nos.1 and 2, that is, the Sub-Registrar,

Birth & Death Section, Gondal Nagarpalika and the Chief Officer, Gondal Nagarpalika respectively, in not acceding to the request of the petitioner in registering the name of his son "Hemanshu" in the Birth Register by misinterpreting the provisions of the Registration of Births and Deaths Act, 1969 ('the Act' for short) and the Gujarat Registration of Births and Deaths (Amendment) Rules, 1985 ('the Rules' for short) and, therefore, prayed to quash and set aside the action on the part of the respondents in refusing to enter the name of the child of the petitioner (named Hemanshu) in the register of birth on the basis of the application dated 2.8.2002 tendered by the petitioner, Annexure B to the petition, by issuing suitable writ, direction or order under Article 226 of the Constitution of India.

2. The facts in nutshell are that:

2.1. The petitioner's wife named Nitaben had given birth to a baby boy on 5.11.1977 and the birth came to be registered on 23.11.1977 in the Register of Births and Deaths, Gondal Nagarpalika. However, as the baby boy was not named, name was not registered at the time of making entry about the birth in the birth register. Subsequently, the said baby boy was named as Hemanshu. The name was entered in the school record as well as in the ration card. It is the case of the petitioner that since the petitioner felt it necessary to have the name of his son entered in the register of birth, he made an application to respondent Nos.1 and 2 on 2.8.2002 stating that the birth of his son was registered in the Register of Births on 23.11.1977. However, the name was not entered in the register of births maintained by Gondal Nagarpalika. Respondent Nos.1 and 2 thereafter by letter dated 2.8.2002 rejected the said application of the petitioner wherein request was made to register the name of his male child in the birth register on the ground that under Rule 11 of the Rules the name of the child of the petitioner cannot be entered after lapse of 15 years from the date of birth. The petitioner is, therefore, constrained to file this petition with the aid of the provisions of Article 226 of the Constitution for claiming the relief to which reference is made in earlier paragraph of this judgment.

3. It may be noted that Mr. Amit Kotak, learned AGP, filed his appearance on behalf of respondent Nos.1 and 3 but no affidavit in reply is filed. Respondent No.2 though duly served has chosen not to file appearance.

4. I have heard Mr. C.L.Soni, learned advocate for the petitioner and Mr. Amit Kotak, learned AGP for respondent Nos.1 and 3. I have also perused the averments made in the memo of the petition, grounds set out therein, provisions of the Act as well as the Rules and the judgment dated 9.10.2002 rendered by this Court in the case of Dipika Arvindkumar Pancholi v. State of Gujarat, in Special Civil Application No. 6962 of 2002. On having perusal of the averments made in the memo of petition and the judgment dated 9.10.2002 rendered in SCA No.6962 of 2002 by this Court, it is noticed that similar question arose before this Court in the said Special Civil Application wherein the identical reliefs have been claimed. This Court, after considering various provisions of the Act and Rules and the judgments of the Supreme Court as well as this Court cited at the bar by the learned advocate appearing for the petitioner in that petition, in para 14 of that judgment, has observed as under:

"14. Applying the principles laid down by the Supreme Court as well as this Court in the above referred to judgments to the facts of the present case, it is seen that in clear terms the Supreme Court has held that if we interpret the statute the result of it may be unjust, however, it does not entitle the court to refuse to give it effect and this is a classic case of casus omissi, that is, circumstances concerning which the Act is silent. Therefore, the said power envisaged under rule 11 of the Rules can be legitimately extended to the power to enter the name of the child even after a period of 15 years on the application of the parent or guardian of the child. If there is a power with the Registrar to enter the name of the child after a period of 12 months and within 15 years from the date of registering the date of birth as per the proviso to rule 11 of the Rules on the request of the parents or guardian of the child, I read that there is also a power with the Registrar to enter the name of the child even after the period of 15 years. In my opinion, it is not the case of total absence of power in the Registrar and therefore the application of the petitioner should have been entertained by the registrar by entering the name of the child in the register. I am, therefore, of the opinion that this is a fit case where power ought to have been exercised by the Registrar under Section 14 of the Act read with rule 11 of the Rules by entertaining the

application submitted by the father of the petitioner by adding name of the petitioner as requested in the application on payment of late fee of RS.2/- or any amount of late fee as may be prescribed by the authority".

5. Applying the principles laid down by this Court in the case of Dipika Arvindkuamr's case (supra) to the facts of the present case, the order dated 2.8.2002 passed on the petitioner's application dated 2.8.2002 to enter the name of of his male child named Hemanshu in the birth register has been turned down by respondent Nos.1 and 2, deserves to be quashed and set aside by directing respondent Nos.1 and 2 by entering name of the male child of the petitioner in the birth register maintained by respondent Nos.1 and 2 Gondal Nagarpalika and hence the petition deserves to be allowed by granting the relief as prayed for therein.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed. Respondent Nos.1 and 2 are directed to entertain the application dated 2.8.2002 submitted by the petitioner afresh and to enter the name of the male child of the petitioner "Hemanshu" in the register maintained by Gondal Nagarpalika on payment of late fee of RS.2/- or any amount of late fee as may be determined by the authority, within period of four weeks from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.M. Kapadia, J.)

(karan)